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XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB : HON'BLE SHRI DHIRENDRA MISHRA, J.

CIVIL REVISION No. 121/2004

PETITIONER Rasthriya Pariyojana Nirman Nigam (National Projects Construction Corporation) 30-31 Raja House Nehru Place, New Delhi having sub-office and works of the same name at Jamnipali Distt. Korba Chhattisgarh

Vs.

RESPONDENT M.K. Saha, son of J.L. Saha Contractor, R/o Adarsh Nagar Projection Emkay Nirman, P.O. Durg (Chhattisgarh)

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Vs.

RESPONDENT M.K. Saha, son of J.L. Saha Contractor, R/o Adarsh Nagar Projection Emkay Nirman, P.O. Durg (Chhattisgarh)

3-8-2007

None appears for the applicant.

Shri S.L. Purohit, Advocate for the respondent.

2. Since both the above civil revisions were disposed of by a common order dated 6-4-2004, both the revisions are being disposed of by this common order.

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3. This revision is directed against the order dated 6th April, 2004 passed by the 3rd Additional District Judge, Bilaspur in Arbitration Case No. 27/2002 whereby the learned 3rd Additional District Judge has rejected the objection preferred by the applicant and has held that the Court has territorial jurisdiction to entertain for the purpose to make rule of Court on the basis of the award and the applications of the applicant are not barred by limitation.

4. This matter was already admitted on 1-10-2004, therefore, it is being decided on merits even in the absence of the applicant.

5. Brief fact of the case are that the awards dated 28-7-1994 and 29-7-1994 were passed by the Sole Arbitrator arising out of the arbitration agreement between the parties and the said arbitrator authorized the non-applicant for filing the award in the Court of learned District Judge, Durg. The same was filed in the said Court and parties were duly noticed. Both the parties appeared before the District Judge, Durg and raised objection that Court has no territorial jurisdiction to make rule of Court on the basis of the award and accordingly it was held that the District Judge, Durg had no territorial jurisdiction. The award was returned to the non-applicant and thereafter the said award was filed in the Court of District Judge, Bilaspur by the non-applicant. The objection of the applicant was that whether the award has been filed by the non-applicant without any valid authority of the arbitrator and whether the award could be

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returned to the non-applicant and whether the award was filed within the prescribed period of limitation ?

6. Learned District Judge, ~~Durg~~ Bilaspur by the impugned order rejected the objections of the applicant and held that the non-applicant was authorized by the Arbitrator by an authority letter for filing the award before the competent Court and simply because the authorization mentioned that the same be filed in the Court of District Judge, Durg will not prohibit from necessity of filing the award before the competent Court and similarly it has also been held that since the award has been filed by the non-applicant on the basis of authorization given by the arbitrator therefore, the same could be validly returned to him for filing before the competent Court since that court had no territorial jurisdiction. Considering the question of limitation, it has been held that the award was returned on 14-5-1996 and the same was filed on 24-6-1996 in the Court of Bilaspur, since the award was filed by the Arbitrator, for the purpose of limitation, article 137 of the Limitation Act was applicable in place of Article 119 of the Limitation Act under which the award may be filed within a period of three years and therefore, filing was within the prescribed period of limitation.

7. I have heard the learned counsel for the applicant.

8. It has been contended that Section 14(2) of the Arbitration Act, 1940 provides that:-

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*"**14. Award to be signed and filed.**-(2) The arbitrators or umpire shall, at the request of any party to the arbitration agreement or any person claiming under such party or if so directed by the Court and upon payment of the fees and charges due in respect of the arbitration and award and of the costs and charges of filing the award, cause the award or a signed copy of it, together with any depositions and documents which may have been taken and proved before them, to be filed in Court, and the Court shall thereupon give notice to the parties of the filing of the award.*

9. Referring to Section 14(2) of the Arbitration Act, 1940, it is contended that it is open to the arbitrator on the request of the party to cause the award to be filed and therefore, filing of the arbitration award by one of the parties after authorization for the same cannot be faulted with.

10. In the matters of **Kubha Mawji –v- Dominion of India** reported in **AIR 1953 SC 313**, while dealing with authority of umpire for filing of award, in para 6 it has been held that this Section (S. 14[2]) clearly implies that where the award or a signed copy thereof is in fact filed into Court by a party he should have the authority of the umpire for doing so. Where the awards are handed over by the umpire to the parties, it cannot be assumed that the mere handing over of the awards to the parties necessarily implies the authority of the umpire to file the same into Court on his behalf. That authority has to be specifically alleged and proved. In absence of such authority, filing of the award by the party cannot be the filing by the umpire.

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11. As already observed by the learned District Judge, the award was filed by the non-applicant along with authority letter of the arbitrator for filing the same before the competent Court.

12. The second objection raised by the applicant as discussed by the learned District Judge in the impugned order is that the Court of District Judge, could not have returned the award and the authority letter to the non-applicant for filing the same before the competent Court. There is no force in this argument and the learned District Judge has rightly pointed out that the non-applicant was authorized by the arbitrator by an authority letter to file the award in the competent Court, therefore, on the objection of the parties, the learned District Judge, Durg rightly returned the award to the non-applicant who had the authority to file the award in his Court for filing the same before the competent Court.

13. The last submission of the applicant that in any case, the award was filed in the Court beyond 30 days i.e. after the expiry of the period of limitation prescribed for this purpose. In the matter of **Patel Motibhai Naranbhai and another –v- Dinubhai Motibhai Patel and others** reported in **AIR 1996 SC 997** in paragraph 9, it has been held that an application for filing the award in the Court has to be made within 30 days from the date of service of notice of making of the award under Article 119 of the Limitation Act. Even if it is held that Article 119 will apply only to an application made by a

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party and not by the arbitrator, Article 137 will come in the way of the arbitrator's making any application beyond the period of three years from the date of making of the award. In the instant case, it is not in dispute that the arbitrator caused the award to be filed through the non-applicant and for that purpose, he handed over the authority letter to the non-applicant authorizing him to file the award before the competent Court and, therefore, for the purpose of limitation, Article 137 of the Limitation Act would be applicable, under which limitation is prescribed as three years. Since the award has been filed by the non-applicant along with authority letter and for this reason, the learned District Judge has rightly held that the award was filed by the Arbitrator within the period of limitation prescribed for the same.

14. Learned Court below considering all the objections raised by the applicant and further considering the law laid down in this regard by Hon'ble Supreme Court has rightly rejected the objections preferred by the applicant and the same is strictly in accordance with law which does not call for any interference.

15. The revisions being devoid of substance are liable to be dismissed and they are accordingly dismissed.

16. A copy of this order be kept in the record of Civil Revision No. 122/2004.

Sd/-
DHIRENDRA MISHRA
Judge

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